Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced In the Matter of	)	GN Docket No. 07-45
Telecommunications Capability to All	)	
Americans in a Reasonable and Timely	)	
Fashion, and Possible Steps to Accelerate	)	
Such Deployment Pursuant to Section 706	)	
of the Telecommunications Act of 1996.	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

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I. INTRODUCTION AND SUMMARY

On April 16, 2007, the Federal Communications Commission ("FCC" or "Commission") released a Notice of Inquiry ("Fifth Deployment NoI") to begin its fifth inquiry under section 706 of the Telecommunications Act of 1996 ("1996 Act")[1] into whether advanced telecommunications is being deployed in a "reasonable and timely fashion" to all Americans.[2] The Commission also requested comment "on various market, investment, and technological trends in order for the Commission to analyze and

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

[2] *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, *Notice of Inquiry*, Rel. April 16, 2007 ("Fifth Deployment NoI"), ¶1.

assess whether infrastructure capable of supporting advanced services is being made available to all Americans."[3] The National Association of State Utility Consumer Advocates ("NASUCA")[4] presents these comments to address the issues raised by the Fifth Deployment NoI, which are vital to the interests of the consumers represented by NASUCA's members, and to assist the Commission in assessing whether broadband deployment is reasonable, timely and accessible to all Americans.[5]

In this proceeding, the Commission seeks to gain information related to how it should define advanced telecommunications (*i.e.*, broadband) services; whether advanced telecommunications services are being deployed on a "reasonable and timely basis" to Americans; and what actions the Commission can take to encourage broadband deployment.[6] As a threshold matter, NASUCA urges the Commission to consider not only whether broadband services are being deployed in a reasonable and timely manner, but, also whether they are being deployed at affordable rates.

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[3] Id.

[4] NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio. Rev. Code Chapter 4911; 71 Pa.Cons.Stat. Ann. § 309-4(a); Md. Pub.Util.Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

[5] Fifth Deployment NoI, ¶ 1. Comments are due May 16, 2007 and Reply Comments are to be filed May 31, 2007. NASUCA commends the Commission for taking action on such an important matter to consumers but questions the ability of parties to submit thorough analyses and the Commission to gain adequate insight into the issue with a two-week period (which includes a holiday weekend) between the filing of initial and reply comments. While NASUCA is sensitive to the fact that the current inquiry is long overdue, the additional time required to ensure a full assessment does seem necessary at this juncture. This lack of time is exacerbated by the fashion in which the Commission has split the current broadband inquiry into three parts with differing timelines, as discussed below.

[6] Id., ¶ 11.

A. Scope of the Fifth Deployment NoI

The Commission has undertaken the current inquiry as part of its ongoing responsibilities under Section 706 of the 1996 Act regarding broadband deployment. This is the Commission's fifth inquiry.[7] The general issues of inquiry that the Commission lays out follow a framework utilized in earlier inquiries, and include the following questions:

- How should we define "advanced telecommunications capability"?
- Is advanced telecommunications capability being deployed to all Americans?
- Is the current level of deployment reasonable and timely?
- What actions, if any, can be taken to accelerate deployment?[8]

The Commission also seeks to explore three other areas of "potential interest to policymakers":

- The economic considerations that support the deployment of advanced telecommunications capability.
- Consumer adoption and usage of services requiring advanced telecommunications capability.
- The competitiveness of the broadband market and whether there is evidence of anticompetitive conduct in this market.[9]

The Commission also concurrently adopted two related items. In WC Docket No. 07-38, the Commission released a Notice of Proposed Rulemaking ("Broadband Data NPRM"), seeking input regarding the improvement of broadband data collection,

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[7] In prior inquiries, the Commission has concluded that "the deployment of advanced telecommunications capability was reasonable and timely on a general, nationwide basis." Fifth Deployment NoI, ¶ 6.

[8] Id., ¶ 11.

[9] Id.

including comprehensive data to determine the availability of broadband deployment in all areas of the country.[10] In WC Docket No. 07-52, the Commission began a Notice of Inquiry ("Broadband Industry Practices NoI") into the behavior of broadband market participants regarding the management of Internet traffic, rate structure issues, and the impact of industry broadband practices on consumers.[11] The Commission is also seeking comment in WC Docket 07-52 on whether it should revise its 2005 Internet Policy Statement to include a new principle of nondiscrimination.

B. Summary of Comments

NASUCA welcomes the opportunity to contribute to the design of national policy on broadband deployment. As the Commission and Congress have recognized upon numerous occasions,[12] broadband deployment throughout the nation is essential to the economy's viability and to consumers' ability to connect to employment, health, entertainment, and other elements of mainstream contemporary society. Furthermore, as with the public switched telephone network, broadband deployment yields substantial positive externalities: The aggregate societal benefits of broadband interconnectedness increase exponentially as the percentage of broadband-served consumers increases.

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[10] *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership,* WC Docket No. 07-38, Notice of Proposed Rulemaking, Rel. April 16, 2007 ("Broadband Data NPRM"). Comments are due 30 days after publication in the Federal Register and reply comments are due 60 days after publication in the Federal Register. As of May 15, 2007, the Broadband Data NPRM had not yet been published in the Federal Register .

[11] *In the Matter of Broadband Industry Practices,* WC Docket No. 07-52, rel. April 16, 2007 ("Broadband Industry Practices NoI"). Initial comments are due June 15, 2007, and reply comments are due July 16, 2007.

[12] *See* Fifth Deployment NoI, ¶¶ 2-5.

The Commission's goal of increasing broadband deployment is unambiguous. Data reported by the Commission demonstrate an unambiguous and ubiquitous consumer demand for broadband services.[13] Yet the Commission's ability to ensure ubiquitous deployment, in order to prevent the continuation of an environment of digital haves and have-nots, is far less certain. In these comments, NASUCA identifies market imperfections regarding broadband deployment and discusses recommendations for remedying these market failures.

Relying solely on market forces to achieve the nation's vision of a ubiquitous affordable broadband network will likely result in the neglect of many consumers. As evidenced by Verizon's recent decision to seek regulatory approval to sell its operations in the three northern New England states,[14] incumbent local exchange carriers ("ILECs") are focusing their operations where the profits are likely the highest.[15] As a result, ILECs probably will continue to slow-roll their digital subscriber line ("DSL") deployment in many areas absent regulatory requirements and incentives. NASUCA urges the

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[13] Residential demand for high-speed lines increased from 3,163,666 in June 2000 to 50,262,193 in June 2006. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of June 30, 2006*, January 2007 ("High Speed Status Report"), at Table 3. (The data for 2000 through December 2004 is not directly comparable to the current data because only providers with at least 250 lines per state were required to file prior to the report containing June 2005 data. Id.)

[14] *Application of Verizon New England Inc., NYNEX Long Distance Company, Bell Atlantic Communications, Inc., Verizon Select Services Inc., Verizon Communications Inc., and Northern New England Spinco Inc., Transferors, and FairPoint Communications, Inc., Transferee, For Consent to Transfer Certain Assets and Long-Distance Customer Relationships in the States of Maine, New Hampshire, and Vermont,* FCC WC Docket No. 07-22, Consolidated Application for Consent to Transfer Assets, January 31, 2007.

[15] In Verizon Communications' second quarter 2006 Investor Quarterly, Ivan Seidenberg, Verizon's chairman and CEO states: "Verizon Telecom is tightly controlling costs in traditional businesses as we make the fiber network investments to accelerate growth and market expansion." Verizon Communications, *Investor Quarterly: VZ Second Quarter 2006*, August 1, 2006, at 2. In its 2006 Annual Report to investors, AT&T, Inc. states that one of its goals in 2007 is to "Strengthen our ability to compete in the video market as we scale our new video services." 2006 AT&T Annual Report, at 3. AT&T also suggests in its Annual Report that "AT&T's video entry will help drive revenue growth." Id., at 11.

Commission to identify those situations where regulatory intervention is necessary to avoid these results, and to design informed and appropriate policy to foster deployment.

Twenty years ago, ILECs' obligation to serve all consumers was undisputed. Rate-of-return regulation provided the Commission and state public utility commissions with the opportunity to oversee the industry's investment and to ensure simultaneously that companies would receive a fair return on their investment. Also, before Verizon and SBC (which is now AT&T) became mega-companies, they were more accountable to their "hometown" regions. For example, in that bygone world, under the direction of state regulators, Verizon, when it was known as New England Telephone and Telegraph Company ("NET"), not only deployed digital switches in the greater Boston area (where revenues from then-new features such as call waiting clearly justified the investment), but also replaced aging electromechanical switches in the Berkshires (where a strict cost-benefit analysis would have delayed such an investment).[16] Over the past years, regulators have lost some useful policy making tools.

Now, small communities in Massachusetts and across the nation are clamoring for access to broadband, suburban and rural alike.[17] Despite widespread consumer demand for advanced services, the nation's advanced telecommunications network is evolving in

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[16] *See, e.g.*, Massachusetts D.P.U. 89-300, where state regulators directed New England Telephone and Telegraph Company ("NET") to accelerate its replacement of outdated electromechanical central office switches in rural Massachusetts so that some communities would not be left behind, lacking access to touch tone, while NET advertised then-new features, such as call waiting, in urban and suburban communities. Massachusetts D.P.U. 89-300, *New England Telephone Company*, June 29, 1990. In a separate order, state regulators found that integrated services digital network ("ISDN") was a "monopoly, basic service that has a potentially far- reaching and significant role in the telecommunications infrastructure of the Commonwealth" and directed NET to deploy ISDN more broadly so that consumers could avail themselves of this then "advanced" technology. ISDN Basic Service, Mass. D.P.U. 91-63-B, February 7, 1992, p. 34.

[17] For example, the first question aired on a January 5, 2007, radio call-in show with Massachusetts Governor Patrick was from a man in Wendell (population 900) asking for the new Governor's views on how to get high speed Internet access to small towns.

a fragmented manner.[18] As will be discussed in more detail in these comments, numerous states are attempting to broaden their citizens' access to broadband services.[19]

Absent state **and** federal regulatory intervention, however, the fragmented network may not reach precisely those consumers who are at the greatest risk of being isolated from society's economic mainstream (such as the unemployed, the home-bound, the disabled, and those living in remote parts of the country) in a timely, affordable, and reasonable manner.

C. Preliminary recommendations

- As an initial matter, the Commission's decision to investigate broadband matters in three distinct proceedings with three separate sets of filing dates, jeopardizes the Commission's ability to define and implement a cohesive, coherent national policy. Rather than fragmenting its approach, the FCC should consider the issues together. Additionally, the Commission's schedule for this proceeding is unduly abbreviated. The Commission should allow more time to permit parties to reply to initial comments.

- The Commission should consider not only whether broadband deployment is timely and reasonable, but also whether broadband service is affordable.

- Deployment of broadband is inadequate, not only in rural areas, but also in suburban areas. The use of zip codes to assess broadband availability is misleading and unreliable.

- The Commission should direct each ILEC and cable company to provide the Commission and state regulators with a geographic information system ("GIS") database showing precisely where broadband access is available, to inform regulators' and policy makers' assessment of the status and future of broadband access.

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[18] A small community just 25 miles from downtown Columbus, Ohio is experiencing the disparity in broadband deployment. One area of the community (served by Time Warner and AT&T Ohio) has access to Time Warner's Road Runner broadband service while an adjacent area (served by Insight Communications and AT&T Ohio) has no access to broadband service. Likewise, there are customers in Maine's capital, Augusta, who do not have access to Verizon's DSL service.

[19] See Section IV and Attachment.

- The Commission, regulators, policymakers, and consumer advocates also require detailed data regarding the costs of deploying available technology in order to fashion the best solution.

- The Commission should ensure that the Regional Bell Operating Companies ("RBOCs") are meeting their various merger commitments.

- The current model of deregulation in return for deployment is not working; the Commission should look to examples in other countries for acceptable models.

NASUCA does not attempt to address all items in the Fifth Deployment NoI in these initial comments, and looks forward to reviewing the comments of other parties and addressing additional issues in reply comments.

II. DEFINING "ADVANCED TELECOMMUNICATIONS CAPABILITY"

The Commission seeks comment on how it should define "advanced telecommunications capability" for the purposes of its inquiry. As noted in the Fifth Deployment NoI, the Commission has never "definitively specified" what speeds are encompassed by the term.[20] Congress specified that the term "advanced telecommunications capability" in Section 706(c) of the Act should be defined "without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology."[21]

[20] Fifth Deployment NoI, ¶ 12.

[21] Id. at fn 2, citing § 706(c) of the 1996 Act.

NASUCA recommends that the Commission establish a definition that evolves, as technology evolves. Dial-up access to the Internet was once state-of-the-art but by today's standards is intolerably slow and inadequate. Today, the Commission's current definition of advanced services as those capable of 200 kilobytes per second in one direction[22] is also woefully out of date. A standard of well over 1 megabyte per second s would be reasonable.[23]

III. IS ADVANCED TELECOMMUNICATIONS CAPABILITY BEING DEPLOYED TO ALL AMERICANS?

On March 26, 2004, President George W. Bush proclaimed that all Americans should have access to broadband technology by the end of 2007.[24] This national goal was never developed, and the industry is not now deploying advanced telecommunications capability to all Americans.[25] Clearly, this goal will not be met. Indeed, ILECs have been making promises for years about deploying state-of-the-art networks and have yet to follow through on these promises.

Yet as noted by NASUCA, the New Jersey Division of Rate Counsel, and the Maine Office of the Public Advocate in the pending investigation of separations in

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[22] See High Speed Status Report at 1, n. 1.

[23] See http://telephonyonline.com/mag/telecom_fast_enough/index.html.

[24] "Promoting Innovation and Competitiveness: President Bush's Technology Agenda." ["This country needs a national goal for … the spread of broadband technology. We ought to have … universal, affordable access for broadband technology by the year 2007, and then we ought to make sure as soon as possible thereafter, consumers have got plenty of choices when it comes to [their] broadband carrier."] http://www.whitehouse.gov/infocus/technology/economic_policy200404/chap4.html (accessed May 7, 2007).

[25] For example, see Commissioner Adelstein's statement before the United States House of Representatives Subcommittee on Rural and Urban Entrepreneurship, Small Business Committee (May 9, 2007) at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-272954A1.doc (accessed May 10, 2007).

Docket No. 80-286, the "ILECs want to have their cake and eat it too: they successfully lobbied for the ability to deny broadband access to competitors and to exclude VoIP and broadband services from state regulatory oversight, yet they now want to preclude state regulators from ensuring that consumers of intrastate regulated services do not foot the bill for these new services and technology."[26] The Commission's separations proceeding bears directly on regulators' ability to prevent and to detect improper cross-subsidization, particularly as carriers use extensive common network and resources as an invaluable strategic and physical platform from which to enter unregulated lines of business, such as DSL, bundled offerings, and FiOS[27]-based Internet and video services.[28]

The ILECs' successful DSL sales yield them substantial profits, in large part because, as a result of the under-assignment of common costs to this line of business, DSL gets a "free ride" over the basic loop.[29] Thus incumbents do not require more money to make advanced services available. Consumers, through rates paid for regulated

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[26] *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Reply Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate in CC Docket No. 80-286, November 20, 2006 ("NASUCA/New Jersey/Maine Reply Comments") at 39. *See also*, Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate in CC Docket No. 80-286, August 22, 2006 ("NASUCA/New Jersey/Maine Comments"); Affidavit of Susan M. Baldwin on behalf of the New Jersey Division of Rate Counsel and the National Association of State Utility Consumer Advocates in CC Docket No. 80-286, August 22, 2006 ("Baldwin Affidavit"); Affidavit of Robert Loube on behalf of the Maine Office of the Public Advocate and the National Association of State Utility Consumer Advocates in CC Docket No. 80-286, August 22, 2006.

[27] See http://en.wikipedia.org/wiki/Verizon_FiOS.

[28] The Commission declared DSL to be an information service and also determined that the RBOCs do not need to offer unbundled fiber to competitors. *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, et al., Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005).

[29] See, NASUCA/New Jersey/Maine Comments at 5-9; NASUCA/New Jersey/Maine Reply Comments at 30-34; Baldwin Affidavit at 66-73.

offerings, have provided ILECs with a steady stream of revenues that has financed the deployment of a ubiquitous public network. Consumers in all areas of a state have paid for broadband deployment through improperly inflated intrastate regulated rates. Yet many consumers are still unable to obtain broadband service.

Left to its own, the industry rationally will seek to maximize profits by deploying and marketing triple play bundled offerings in densely populated regions and to "high value" consumers, further entrenching a societal digital divide.[30] ILECs' foot-dragging on DSL is comparable to their foot-dragging in the 1990s on deploying ISDN, a predecessor to DSL, at affordable rates. This should not be condoned by the Commission.

Verizon's sale of its properties in the three northern New England states is asserted to represent its abandonment of higher-cost, less-profitable territories. Whether FairPoint, a company with far fewer resources than Verizon, will be able to deploy broadband when Verizon has failed is entirely unknown. Verizon may continue to seek to sell off other service territories instead of deploying DSL.[31] Those territories must not be allowed to become, in effect, second-class citizens in the world of broadband access. In those instances where ILECs do not sell off "unwanted" territories, they will likely simply neglect them, absent regulatory intervention.

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[30] "By any measure, we had a great year. But I'm most proud of the value we returned to our stockholders. Our total stockholder return in 2006 was more than 53 percent, the second-highest return for all Dow industrials stocks. We also achieved our seventh consecutive quarter of adjusted double-digit year-over-year EPS growth. And adjusted EPS for the year was 36 percent higher than in 2005. We also demonstrated our commitment to stockholder value by launching a plan to repurchase $10 billion in stock by the end of 2007, and we got a strong start toward this goal by repurchasing $2.7 billion in 2006. In addition, we increased our dividend for the 22nd consecutive year — a record unmatched in our industry." 2006 AT&T Annual Report, at 3.

[31] See "Carlyle Group to Buy Verizon Hawaii for $1.65 billion" Carlyle Group press release (May 21, 2004) http://www.thecarlylegroup.com/eng/news/l5-news2792.html (accessed May 10, 2007).

Of course, cable systems also provide access to broadband. Yet cable systems are not nearly as ubiquitous as the public telephone network. In any event, the evolution of a duopoly consisting of the telecommunications incumbent and the cable incumbent does not provide adequate competitive broadband alternatives for consumers. This is exemplified by the fact that cable companies continue to charge more than $40 for broadband service even where ILECs like Verizon are charging as little as $15.

The first step, however, is to get broadband access for all consumers who desire it. Then we can worry about fostering competition for such access.

IV. IS DEPLOYMENT REASONABLE AND TIMELY? ARE BROADBAND SERVICES AFFORDABLE?

The deployment of broadband in the U.S. is not currently reasonable or timely. And broadband service is often not affordable. A recent editorial states the case:

> When it comes to reasonably priced, high-speed Internet service, the United States is an embarrassment. Despite years of promises from politicians and technology titans, the U.S. continues to lag far behind our global competitors … both government and the telecommunications industry are to blame … the federal government's lack of leadership in this area is a disgrace. Despite a 2004 promise by President Bush to deliver "universal, affordable access to broadband technology by the year 2007," his administration has done nothing to advance that goal.[32]

Numerous states have acknowledged that broadband access is a vital part of economic development and are addressing the deployment issue through either legislation or regulatory intervention.[33] The most ambitious effort is taking place in Kentucky.

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[32] "We're stuck in the slow lane of the information highway" San Jose Mercury News editorial, May 7, 2007 at http://www.mercurynews.com/opinion/ci_5836382?nclick_check=1 (accessed May 8, 2007).

[33] A chart listing the activity by state is attached to these comments. See Attachment.

On October 7, 2004, Governor Fletcher announced his "Prescription for Innovation: Delivering Broadband Technology for a 21st Century Kentucky," a statewide initiative to provide broadband access to all Kentuckians by 2007. This announcement led to the creation of ConnectKentucky – a not-for-profit entity funded through state, federal and private dollars that manages and participates in numerous projects with one universal goal: to support the growth and economic development of technology in Kentucky.[34] This is being carried out through ConnectKentucky's primary initiative, a comprehensive plan to accelerate technology growth, particularly in the areas of broadband deployment and technology literacy and usage.

Private sector investment in telecommunications infrastructure has reached an unprecedented level in Kentucky. Over the course of implementation of the plan, statewide broadband availability and usage have increased by 53% and 73% respectively. An estimated 504,000 previously unserved households can now access broadband. Currently, 92% of Kentucky homes can access broadband, on track to reach 100% availability in 2007. Additionally, Kentucky's *Prescription for Innovation* has produced the most sophisticated telecommunications inventory map in the nation, using advanced GIS mapping technology and grassroots data collection. The map not only illustrates service gaps, but it also serves as an economic development resource for communities to illustrate existing infrastructure for locating companies. Additionally, the initiative mobilizes local leadership teams in each community and produces community-specific

[34] http://www.connectkentucky.org/about/default.htm (accessed May 7, 2007). The information in this paragraph of the text is taken from the ConnectKentucky website. A similar initiative was recently created in Maine. See www.maine.gov/connectme.

implementation plans to empower local leaders and increase citizen demand for expanding broadband technology.

In most of the country, consumers' access to broadband services depends not on their relative interest in or willingness to pay for broadband services, but rather on regulatory rolls of the dice. For example, the Commission has investigated many telecommunications mergers in recent years, yet only in its most recent merger decision has it approved a transaction conditioned on the acquiring company's commitment to offer affordable, ubiquitous broadband service.[35] Uneven and disparate access to an increasingly integral component of today's society is unacceptable and not in the public interest.

Consumers in Verizon-served territory lack the benefit of the commitment to affordable broadband that the recent AT&T/BellSouth merger conditions provide to consumers in the 22 states served by AT&T, and yet clearly there is no reason that AT&T customers are more "deserving." Furthermore, Verizon's promises to deploy its pricier FiOS platform[36] will not provide benefits to consumers seeking more affordable ways to access the Internet. Verizon customers pay $39.99 for stand-alone FiOS-based access to the Internet.[37] By comparison, Verizon's DSL-based Internet is $14.99 for the first

[35] See Section V.

[36] Thomson Street Events, Conference Call Transcript, Verizon FiOS Briefing Session (September 27, 2006) at 4 available at: http://investor.verizon.com/news/20060927/.

[37] See http://www22.verizon.com/content/consumerfios/packages+and+prices/packages+and+prices.htm

twelve months,[38] and AT&T's new DSL rate from the merger is $10.00.[39]

Although FiOS offers superior speed and capability, some customers seek a lower capacity and more affordable way to access the Internet. Verizon's push to deploy FiOS will likely distract it not only from installing and repairing basic telephone service in a timely manner, but also from deploying DSL at an affordable rate.

V. WHAT ACTIONS CAN ACCELERATE DEPLOYMENT?

NASUCA lauds the Commission's successful efforts to integrate broadband commitments with its review and approval of AT&T's acquisition of BellSouth, and urges it to replicate this approach in the Commission's review and deliberations on the public interest of pending and future transactions. These efforts have resulted in specific commitments by AT&T to increase the deployment of affordable retail and unbundled DSL as part of its merger with BellSouth. The commitments include:

- By December 31, 2007, AT&T/BellSouth will offer broadband Internet access service (*i.e.*, Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory. To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the "Wireline Buildout Area"). AT&T/BellSouth will make available broadband Internet access service to the remaining living units using alternative technologies and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline

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[38] See http://www22.verizon.com/ForHomeDSL/Channels/DSL/olo_landing_new.asp.

[39] *In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189 (rel. March 26, 2007), Appendix F ("AT&T/BellSouth Merger Conditions").

Buildout Area commitment will be to rural areas or low income living units.

- AT&T/BellSouth will provide an ADSL modem without charge (except for shipping and handling) to residential subscribers within the Wireline Buildout Area who, between July 1, 2007, and June 30, 2008, replace their AT&T/BellSouth dial-up Internet access service with AT&T/BellSouth's ADSL service and elect a term plan for their ADSL service of twelve months or greater.

- Within six months of the Merger Closing Date, and continuing for at least 30 months from the inception of the offer, AT&T/BellSouth will offer to retail consumers in the Wireline Buildout Area, who have not previously subscribed to AT&T's or BellSouth's ADSL service, a broadband Internet access service at a speed of up to 768 Kbps at a monthly rate (exclusive of any applicable taxes and regulatory fees) of $10 per month.

- Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the "Implementation Date" in that state. For purposes of this commitment, the "Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth's in-region territory in that state. Within twenty days after meeting the Implementation Date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.

- AT&T/BellSouth will extend until thirty months after the Merger Closing Date the availability within AT&T's in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the *SBC/AT&T Merger Order* (FCC 05-183).

- Within twelve months of the Merger Closing Date, AT&T/BellSouth will make available in its in-region territory an ADSL service capable of speeds up to 768 Kbps to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service ("Stand Alone 768 Kbps service"). AT&T/BellSouth will continue to offer the 768

Kbps service in a state for thirty months after the "Stand Alone 768 Kbps Implementation Date" for that state. For purposes of this commitment, the "Stand Alone 768 Kbps Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer the Stand Alone 768 Kbps service to eighty percent of the ADSL-capable premises in AT&T/BellSouth's in-region territory in that state. The Stand Alone 768 Kbps service will be offered at a rate of not more than $19.95 per month (exclusive of regulatory fees and taxes). AT&T/BellSouth may make available such services at other speeds at prices that are competitive with the broadband market taken as a whole.

- AT&T/BellSouth will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the combined AT&T/BellSouth territory that is functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date. Such wholesale offering will be at a price not greater than the retail price in a state for ADSL service that is separately purchased by customers who also subscribe to AT&T/BellSouth local telephone service.[40]

These commitments -- laudable as they are -- raise several issues. First, the Commission must ensure that AT&T complies with the commitments. Unfortunately, the commitment description as set forth in the Commission's order does not address what happens if the commitment is not met. Monitoring and sanctions are critically important to ensure that the intended benefits flow through to consumers. Second, education is critically important to ensure that the intended benefits flow through to consumers. The Commission should identify alternative ways to reach the same objective.

Further, the commitments do not provide any benefit to consumers in the 28 states and District of Columbia that AT&T does not serve (nor in those areas of the 22 AT&T states where AT&T is not the ILEC). The Commission is presently reviewing Verizon's proposed sale of its operations in the northern New England states to FairPoint.

[40] AT&T/BellSouth Merger Conditions (footnotes omitted).

NASUCA urges the Commission to condition its approval of Verizon's sale on Verizon's commitment to adopt the AT&T/BellSouth broadband conditions in the 26 jurisdictions which Verizon continues to serve. In filings with the Commission, FairPoint states that it will accelerate the deployment of broadband in these three states.[41] FairPoint should also be subject to commitments similar to AT&T/BellSouth in the New England states.[42]

The proposed FairPoint sale is strong evidence of Verizon's continued discounting of service to non-urban areas.[43] To offset that harm, conditions are necessary to protect Verizon's customers located in less profitable markets.

As a result of such commitments, and including the three northern New England states, consumers in most states would then have access to affordable DSL and to the possibility of competitive alternatives that depend on access to the ILECs' stand-alone DSL. NASUCA recognizes that the 14 states that Qwest serves, and Alaska and Hawaii, and territories in the AT&T/Verizon states not served by RBOCs, which include many sparsely populated regions, would not benefit from these conditions. Today's regulators

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[41] *Application of Verizon New England Inc., NYNEX Long Distance Company, Bell Atlantic Communications, Inc., Verizon Select Services Inc., Verizon Communications Inc., and Northern New England Spinco Inc., Transferors, and FairPoint Communications, Inc., Transferee, For Consent to Transfer Certain Assets and Long-Distance Customer Relationships in the States of Maine, New Hampshire, and Vermont,* FCC WC Docket No. 07-22, Consolidated Application for Consent to Transfer Assets, January 31, 2007, at 18-19. The Applicants state, "FairPoint plans to increase broadband availability from current levels in Maine, New Hampshire, and Vermont within twelve months after the completion of the merger by expanding investment and offering quality broadband-based services." Id., at 18.

[42] This should include the legacy FairPoint properties in those states.

[43] Verizon sold hundreds of rural exchanges shortly after the Bell Atlantic/GTE merger. See Verizon Press Release, "Verizon To Complete Sale of Kentucky Phone Exchanges To Alltel on July 31" (July 22, 2002) (available at http://newscenter.verizon.com/press-releases/verizon/2002/page.jsp?itemID=29720105); Verizon Press Release, "CenturyTel To Buy All Verizon Local Telephone Properties in Alabama and Missouri for $2.159 Billion" (October 22, 2001) (available at http://newscenter.verizon.com/press-releases/verizon/2001/page.jsp?itemID=29745172). Verizon also recently agreed to pay fines for widespread and long-term service quality problems in its Ohio region, which consists entirely of rural areas. See In the Matter of a Settlement Agreement Between the Staff of the Public Utilities Commission of Ohio and Verizon North, Inc., PUCO Case No. 07-511-TP-UNC, Finding and Order (May 2, 2007) (available at http://dis.puc.state.oh.us/TiffToPDf/A1001001A07E02B40730G94212.pdf).

need to find alternative ways to encourage/require deployment. The health of the country's economy and the well-being of its citizens depend on the Commission's leadership in this proceeding and in the related Dockets 07-52 and 07-38.

VI. CONCLUSION

NASUCA supports the Commission's endeavors to refine its broadband policies to encourage the deployment of a national broadband network, with high-speed access provided to consumers in a timely manner at affordable rates. NASUCA looks forward to reviewing the other comments filed in this docket, and to submitting reply comments addressing those other comments. NASUCA also expects to file comments in the Commission's other pending broadband dockets.

Respectfully submitted,

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STATES WITH ADVANCED SERVICES/BROADBAND ACTIVITY
As of 5/8/07

State	Legislation/PUC Proceeding Number	Activity
Alabama	HR 430	House Resolution 430 (released week of 4/30) would create House interim committee to study broadband Internet access "with goal of studying how to provide enhanced broadband to citizens, businesses, etc."
California	Executive Order S-23-06 (11/28/06) PUC Broadband Report Update (9/20/06)	Gov. Schwarzenegger's Executive Order created California Broadband Task Force; stakeholders to remove barriers to broadband access, identify opportunities for increased broadband adoption & deployment of new technologies Addresses broadband market, emerging technologies, municipal wireless networks, community-based projects, initiatives in other states (including mapping projects in Kentucky, Vermont and Wyoming) and California broadband maps
Connecticut	Substitute HB 6780	Creates Broadband Internet Coordinating Council; monitor trends and developments in efforts to develop statewide infrastructure
Hawaii	HB 310	Joint conference committee recommended passage of amended bill. Task force comprised of 3 members of House and Senate, 4 from government and 5 from private sector; make findings and recommendations to improve broadband capabilities; effective date of July 1

State	Legislation/PUC Proceeding Number	Activity
Illinois	HB 754	Passed House; referred to Senate Rules Committee on 5/1/07. Creates nonprofit agency that would be required to create geographic statewide inventory of high-speed service; provide baseline of deployment in terms of percentage of household with high-speed availability; collaborate with providers to encourage deployment by "aggregating local demand, mapping analysis and creating market intelligence"
Kansas	HB 2157	Require Kentucky Corporation Commission to conduct survey on deployment of broadband technologies to identify deployment disparities; completed by 12/31/07; study presented to House and Senate committees
Kentucky	Governor's *"Prescription for Innovation"* ConnectKentucky	On October 7, 2004, Governor Ernie Fletcher announced Kentucky's "*Prescription for Innovation:* Delivering Broadband Technology for a 21st Century Kentucky," a statewide initiative to provide broadband (high-speed Internet) access to all Kentuckians by 2007. Created as result of Governor's *"Prescription for Innovation*"; not-for-profit funded through state, federal and private dollars. www.connectkentucky.org
Maine		In 2006 ConnectME Authority created to expand broadband and wireless services through Maine. Under Chapter 93 ("Advanced Technology Infrastructure") tax reimbursements will be available for infrastructure investments made in areas that are presently unserved; the Authority will receive money from the Universal Service Fund to assist Maine residents in expanding broadband services; the Authority will obtain USDA rural development money to advance broadband deployment and it will track investments and continually assess the availability of services. http://www.maine.gov/connectme

State	Legislation/PUC Proceeding Number	Activity
New York	AO2435 (1/17/07)	Purpose is to expand broadband infrastructure throughout NY; creates broadband development authority; investigate, evaluate & assess current & future broadband infrastructure needs; can issue bonds or notes
	Governor Spitzer's "Universal Broadband Initiative"	Included $5 million in state budget to start a statewide broadband initiative to ensure that New York residents have increased access to affordable, high-speed Internet service. http://www.ny.gov/governor/press/0405071.html
Ohio	HB 72	Creates the Ohio Broadband and Wireless Telecommunications Task Force; will examine and make recommendations on the availability of broadband and wireless telecommunications in Ohio and any economic impact such availability creates, the present or future availability and other issues; issue report of findings and recommendations to Senate, House and Governor.
Tennessee	SB1572/HB2100	Creates nonprofit corporation known as Tennessee Broadband Access Corporation; authorizes Tennessee regulatory authority to collect data relevant to assessing access to broadband technologies
	SB1716/HB 2103	Requires Economic & Community Development to establish ConnectTN program; designed to provide access to broadband technology to all citizens; goals include full deployment throughout state by end of 2010; authorizes TRA to collect & provide data relative to deployment

State	Legislation/PUC Proceeding Number	Activity
Vermont	HB 248	Establish Vermont Telecommunications Authority to advance broadband infrastructure; goal to ensure that all regions have access to affordable broadband no later than 12/31/2010; develop and maintain inventory of locations at which broadband services are not available; develop & maintain inventory of infrastructure necessary to provide broadband to areas unserved; establish partnerships with telecom. providers and other stakeholders Passed by House; amended in Senate; to be referred to conference committee
Virginia		In 2003, under the leadership of then Governor Mark Warner, Virginia formed Mid-Atlantic Broadband Cooperative ("MBC") MBC's mission was to build more than 700 miles of new fiber optic infrastructure to connect 5 cities, 20 counties and 56 industrial parks. Fiber buildout completed in 2006 providing high speed access to nearly 700,000 Virginians. http://www.mbc-va.com
Washington	SB 5120	Requires survey of deployment of broadband technologies among households to encourage cost-effectiveness and identify factors preventing widespread availability; survey to profile households/businesses with no broadband options, those with access but who choose not to subscribe and purposes for which broadband is being used

State	Legislation/PUC Proceeding Number	Activity
West Virginia	Public Service Commission Case No. 00-0028-T-GI	By Order dated March 13, 2000, the Public Service Commission instituted a general investigation into the deployment of advanced telecommunications services. As part of this investigation, the Commission created an Advanced Services Task Force. The Task Force's first report was filed on February 28, 2003 with the most recent update filed on April 24, 2007. The 2007 report is based on data solicited from broadband providers and national reports. Attachments to this report list the communities with cable modem and/or DSL service. Maps depict where broadband service is available and where it is not available. http://www.cad.state.wv.us

Other References

"Verizon Calls for Inventory of Broadband Networks"	TR, 3/1/07, p. 34	Tom Tauke pointed to Connect Kentucky program which conducted statewide inventory and followed it up with "systematic process of trying to engage private sector to deliver broadband networks and services; 94% of KY consumers now have access to broadband service
"Broadband Advocate Outlines Eight Steps to National Plan"	Telephone Online, 1/31/07	Baller-Herbst law firm; step 3 is creation of federal blue-ribbon task force; step 4 is gathering and exchanging information; step 5 gathers information on available resources and needs and identifies factors influencing broadband deployment
"Speed Matters: Affordable High Speed Internet for All"	CWA Policy Paper, October 2006, www.speedmatters.org	